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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,460	05/08/2001	Ulrich Reiners	9784-3U2 (TH8002US/B)	4175

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EXAMINER
KRUER, KEVIN R

ART UNIT	PAPER NUMBER
1773	8

DATE MAILED: 05/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-8

Office Action Summary	Application No.	Applicant(s)	
	09/851,460	REINERS ET AL.	
	Examiner	Art Unit	
	Kevin R Kruer	1773	

-- The MAILING DATE of this communication appears on the cover sh et with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *01 March 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. *09/072018* .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 112

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "texture and appearance of paper" is indefinite. Specifically, the term is relative and has no art accepted meaning and it is unclear how the laminate is like paper.

Claim Rejections - 35 USC § 103

2. Claims 1-4, 6, 7, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell et al. (US 4,526,823) in view of Hattori (US 4,526,823) for reasons of record. The filled layer has a thickness of 76-177 microns (col 4, line 65).

3. Claims 1-4, 6, 7, and 9-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schirmer (US 5,011,735) in view of Hattori et al. (US 4,567,089) for reasons of record. Furthermore, it would have been obvious to vary the thickness of the filled layer in order to obtain improved deep drawability and stiffness.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schirmer (US 5,011,735) in view of Hattori et al. (US 4,567,089), claims 1-4 and 6-15 above, and further in view of Bochow et al. (US 5,449,552) for reasons of record.

5. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schirmer (US 5,011,735) in view of Hattori et al. (US 4,567,089), as applied to claims 1-4 and 6-15 above, and further in view of Applicant's Admissions for reasons of record.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell et al. (US 4,526,823) or Schirmer (US 5,011,735) in view of Hattori (US 4,567,089), as applied above, and further in view of Rosen (US 5,635,011) for reasons of record.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell et al. (US 4,526,823) or Schirmer (US 5,011,735) in view of Hattori (US 4,567,089), as applied above, and further in view of Blemburg et al. (US 5,108,844) for reasons of record.

8. Claims 1, 2, 4, 6-11, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bochow et al. (US 5,449,552) in view of Hattori et al. (US 4,567,089) for reasons of record.

Response to Arguments

Applicant's arguments filed March 1, 2002 have been fully considered but they are not persuasive.

With respect to Farrell in view of Hattori, Applicant argues that Farrell teaches away from varying the thickness ratio of the filled layer to unfilled layers by suggesting that the "thickness of each layer is not per se critical (col 4, lines 60-63)." The examiner notes that Farrell was never relied upon to teach the claimed thickness ratio. Hattori was relied upon to motivate one of ordinary skill in the art to control the thickness ratio of unfilled layers to filled layers.

According to Applicant, Hattori is not combinable with Farrell because the laminate taught in Hattori is thicker than the laminate taught in Farrell. Applicant argues that one of

ordinary skill in the art would not have expected success in applying the teachings of Hattori to the thinner film taught in Farrell. The examiner respectfully disagrees. The teachings of Hattori are not limited to a specific thickness range. Applicant is attempting to define Hattori's invention by the disclosed examples. However, the teachings of Hattori cannot be limited to the disclosed working examples. Thus, the teachings of Hattori have been broadly interpreted to read on laminates with any thickness.

Applicant further argues the teachings of Hattori were improperly extended to the laminates taught by Farrell and Schirmer. Specifically, Applicant argues that the teachings of Hattori are relevant only to laminates comprising specific compositions A and B (col 2, lines 4+). Since the laminates taught in Farrell and Schirmer comprise additional layers and different compositions for the filled and unfilled layers, Applicant concludes that the teachings of Hattori are not relevant to the laminates taught in Farrell and Schirmer. The examiner respectfully disagrees. Hattori teaches that the presence of the filler is known to affect a laminate's heat resistance, stiffness, and dimensional stability (col 1lines 57+). Furthermore, the amount of filler added to the laminate is known to affect the laminate's deep drawability (col 4, lines 52+). Thus, the examiner maintains the position that the teachings of Hattori are properly combinable with any thermoformed laminate in which such properties are desired.

With respect to the rejection of Schirmer in view of Hattori, Applicant argues that Schirmer provides no teaching or suggestion to add filler to the taught propylene layer. The examiner acknowledged this deficiency in the rejection, and relied upon the teaching of Hattori to motivate one of ordinary skill in the art to add filler to the propylene layer. The teachings of Hattori and Schirmer, according to Applicant, are divergent from one another. Specifically,

Schirmer seeks to achieve high formability (see title) while Hattori seeks to balance formability and stiffness. The examiner disagrees with Applicant's conclusion. The examiner maintains the position that one of ordinary skill in the art would have been motivated by the teachings of Hattori to add filler to the propylene layer of Schirmer, because Hattori teaches doing so will allow the laminate to maintain the desired level of formability, while exhibiting the extra benefit of improved stiffness.

Applicant further argues that one of ordinary skill in the art would not have been motivated to utilize the sealant taught in Bochow in place of the sealant taught in Schirmer, because Bochow is directed to a laminate with low formability whereas Schirmer is directed to a laminate with high formability. The examiner respectfully disagrees with the notion that Bochow teaches a low formability film. Bochow teaches a laminate that may be formed "in standard automatic machines (col 3, line15)." Furthermore, the examiner maintains the position that Bochow is relevant prior art because of its structural similarity to Schirmer (i.e. both references teach a three-layered film comprising a base layer, a barrier layer, and a sealant layer) and because both references are drawn to the food packaging art. Furthermore, the examiner points out, in arguendo, that if the teachings of Bochow are directed to a low formable film, the sealant layer does not give the laminate such a property. Thus, the examiner maintains that one of ordinary skill in the art would have been motivated to utilize the sealant taught in Bochow as the sealant taught in Schirmer because said layers are functionally equivalent.

With respect to Rosen and Blemburg, Applicant argues that the teachings of said secondary references are not drawn to the same field as the primary reference. The examiner respectfully disagrees. The examiner takes the position that Rosen and Blemburg are directed to

the same field- laminates comprising a barrier layer adjacent to a resin layer. Thus, the examiner maintains the rejection.

With respect to Bochow in view of Hattori, Applicant argues that the thicknesses for the individual layers taught in Bochow do not render the claimed thickness ratios obvious. The examiner agrees, but points out that Bochow was never relied upon for such a teaching. Rather, Hattori was relied upon to teach the claimed thickness ratios. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant further argues that Hattori would not have motivated one of ordinary skill in the art to optimize the thickness ratio of the laminate taught in Bochow because Bochow is directed to a high stiffness, low formability laminate, whereas Hattori is drawn to a laminate with a balance of stiffness and thermoformability. The examiner disagrees with Applicant's conclusion. The examiner maintains the position that one of ordinary skill in the art would have been motivated by the teachings of Hattori to optimize the thickness ratios of the laminate taught in Bochow, because Hattori teaches doing so will allow the laminate to maintain the desired level of stiffness, while exhibiting the extra benefit of improved formability.

The laminate taught in Bochow is not formed on a FFS and, according to Applicant, does not have "excellent thermoformability." In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., thermoforming of a FFS and "excellent thermoformability") are not recited

in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to the Walter declaration, the examiner takes the position that the examples comprising 6 layer laminates are not analogous to the claims that are directed to 3 layered-laminates. Furthermore, it is not clear on what claimed layer layer A' reads.

The examiner also takes the position that Hattori demonstrates that films with the claimed thickness ratios exhibit improved thermoformability. Furthermore, test IIb (comparative example in the declaration) has the same packaging speed as the inventive examples. Thus, Applicant's showing of unexpected results is not conclusive.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R. Kruer whose telephone number is (703) 305-0025. The examiner can normally be reached on Monday-Friday from 7:00 a.m. to 4:00 p.m.

Kevin R. Kruer
Patent Examiner

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